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September 27, 2000

VIA HAND DELIVERY

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

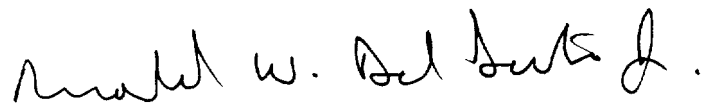
**Re: File No. NSD-L-00-169; CC Docket 96-98;
Comments of RCN-BecoCom, L.L.C.**

Dear Secretary Salas:

On behalf of RCN-BecoCom, L.L.C. ("RCN"), enclosed please find an original and four (4) copies of RCN's comments in the above-referenced docket. Please date stamp and return the enclosed extra copy. Concurrent with this filing, RCN is submitting two (2) copies of its comments to the Network Services Division.

Should you have any questions with respect to this matter, please do not hesitate to call Ron Del Sesto at (202) 945-6923.

Respectfully submitted,



Ronald W. Del Sesto, Jr.

Counsel for RCN BecoCom, L.L.C.

Enclosure

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	File No. NSD-L-00-169
Massachusetts Department of)	
Telecommunications and Energy)	
Petition for Delegation of Additional)	CC Docket No. 96-98
Authority to Implement Number)	
Conservation Measures)	

**COMMENTS OF
RCN-BECOCOM, L.L.C**

RCN-BecoCom, L.L.C. ("RCN") by undersigned counsel and pursuant to the Common Carrier Bureau's August 29, 2000 Public Notice,¹ submits its Comments in the above-captioned proceeding.

I. Introduction

As a provider of telecommunications services in the Commonwealth of Massachusetts, RCN is well aware of the problems caused by number exhaust. RCN is dependent upon access to numbering resources both to initiate and expand its services offerings. RCN's ability to compete effectively for new customers, and to continue to serve the needs of existing customers in an efficient and cost effective manner, is wholly dependent upon its ability to obtain non-discriminatory and timely access to numbering resources. As a result, RCN is acutely aware of the effects of the number shortages now being experienced in Massachusetts.

¹ *Common Carrier Bureau Seeks Comment on the Massachusetts Department of Telecommunications and Energy Petition for Delegation of Additional Authority to Implement Number Conservation Measures in Massachusetts*, NSD File No. L-00-169, Public Notice, DA 00-1982 (rel. Aug. 29, 2000).

RCN supports the efforts of the Massachusetts Department of Telecommunications and Energy (“Department”) to address the problem of number exhaust. RCN expects that the Federal Communications Commission (“FCC”) will grant additional delegated authority to the Department that is consistent with its prior orders issued in response to petitions filed by numerous other state commissions.² While RCN does not support every aspect of the FCC’s prior orders, RCN will not repeat past arguments in this filing. Instead, RCN will focus on issues related to the implementation of number conservation measures by state commissions that have received delegated authority and suggest that the FCC tailor any grant of authority it provides to the Department to address some of the issues that have already arisen in other states. Further, RCN requests that the FCC require that the Department’s pooling trial conform to the national framework set out in the FCC’s *Number Resource Optimization Order*. In addition, RCN requests that the FCC direct the Department to reserve one 10,000 NXX block for facilities-based providers. Finally, RCN recommends that the FCC deny the Department’s request to set and/or revise rationing procedures.

² See, e.g., *Connecticut Dept. of Pub. Util. Control Petition for Delegation of Additional Authority to Implement Area Code Conservation Measures*, CC Docket No. 96-98 (rel. Nov. 30, 1999); *New Hampshire Pub. Utils. Comm’n Petition for Additional Delegated Authority to Implement Number Optimization Measures in the 603 Area Code*, CC Docket No. 96-98 (rel. Nov. 30, 1999); *Petition of the Ohio Pub. Utils. Comm’n for Delegation of Additional Authority to Implement Number Conservation Measures* (rel. Nov. 30, 1999); *Petition of the Pub. Util. Comm’n of Texas for Expedited Decision for Authority to Implement Number Conservation Measure*, CC Docket No. 96-98 (rel. Nov. 30, 1999); *Petition of the Pub. Service Comm’n of Wisconsin for Delegation of Additional Number Conservation Measures* (rel. Nov. 30, 1999); *California Pub. Utils. Comm’n Petition for Delegation of Additional Authority Pertaining to Area Code Relief and NXX Code Conservation Measures*, CC Docket No. 96-98, FCC 99-248 (rel. Sept. 15, 1999) (“*California Delegation Order*”); *Florida Pub. Service Comm’n Petition to Federal Communications Comm’n for Expedited Decision for Grant of Authority to Implement Number Conservation Measures*, CC Docket No. 96-98, FCC 99-249 (rel. Sept. 15, 1999); *Massachusetts Dept. of Telecom. and Energy’s Petition for Waiver of Section 52.19 to Implement Various Area Code Conservation Methods in the 508, 617, 781, and 978 Area Codes*, CC Docket No. 96-98, FCC 99-246 (rel. Sept. 15, 1999); *New York State Dept. of Pub. Service Petition for Additional Delegated Authority to Implement Number Conservation Measures*, CC Docket No. 96-98, FCC 99-247 (rel. Sept. 15, 1999); *Maine Pub. Utils. Comm’n Petition for Additional Delegated Authority to Implement Number Conservation Measures*, CC Docket No. 96-98, FCC 99-260 (rel. Sept. 28, 1999).

II. The FCC Should Clarify the Delegated Authority that State Commission's Possess in Expanding Pooling Trials

While the FCC has granted numerous state commissions the authority to engage in thousands block number pooling, RCN requests that the FCC clarify its delegation of authority in the expansion of pooling trials. In granting various state commissions authority to engage in thousands block number pooling trials, the FCC has also made clear that only after full implementation in one MSA may state commissions expand the trial to additional MSAs. Carriers must engage in various time consuming tasks in order to prepare for a number pooling trial. For carriers operating in multiple states that are also implementing number pooling trials, carriers must commit valuable resources to such efforts. The industry must be able to take all the necessary steps that are required for such implementation. It is impossible to predict the complications that will arise in each MSA as well as to forecast the demand for ported numbers.³ Some state commissions have interpreted the FCC's delegation of authority to mean that so long as a number pooling trial has been initiated in a certain MSA, they may then expand the trial into another MSA before fully implementing the number pooling trial in the original MSA. Given the uncertainties of the pooling process, state commissions must allow carriers time to prepare for number pooling and implement trials one MSA at a time.

RCN further requests that the FCC direct state commissions reserve one 10,000 NXX block for facilities-based providers, that is, carriers that actually construct their networks as opposed to those that purchase unbundled network elements ("UNEs"). Carriers that engage in the construction of their own networks cannot apply for codes as quickly as those that rely on UNEs to provide

³ See *Numbering Resource Optimization*, CC Dkt. No. 99-200, FCC 00-104, Report and Order and Further Notice of Proposed Rulemaking, (rel. March 31, 2000) ("*Numbering Order*"), at ¶ 170.

service. Thus, such providers find themselves at a distinct disadvantage when attempting to acquire necessary numbering codes.

Finally, RCN requests that if the FCC grants the Department authority to implement number pooling trials then the FCC should require that the trial follow the national framework set out in the FCC's *Number Resource Optimization Order*. Since implementation of nationwide number pooling should occur within the next year, it would be a waste of time and money for carriers to have to transition from a pooling trial on the state level that is inconsistent with national standards.

III. The Commission Should Not Allow the Department to Ration Numbers for Six Months Following the Implementation of Area Code Relief

The Department requests that the Commission allow it to set and/or revise rationing procedures for a period of six months following the implementation of area code relief.⁴ The Department notes that FCC rules do not allow rationing unless the state commission has adopted an area code relief plan and set a date for relief. Relying on the FCC's departure from this rule in its delegation of number conservation authority to the California Public Utilities Commission ("CPUC"), the Department argues that the FCC grants exceptions if the state commission can demonstrate that "extenuating and unique" circumstances warrant deviation.⁵

A. "Extenuating and Unique" Circumstances Do Not Exist in Massachusetts

The Department argues that, similar to California, extenuating and unique circumstances exist in Massachusetts. In support, the Department explains that the industry refuses to embrace rationing. Further, the Department informs the FCC that both the state Senate and House passed

⁴ See *Petition*, at pp. 15-17.

⁵ See *California Delegation Order*, at ¶ 38; *Petition*, at pp. 15-17.

resolutions requesting the Department and the Governor to investigate all potential alternatives to preserve the use of the single 413 NPA in western Massachusetts.⁶ Additionally, the Department emphasizes that if granted this authority it does not intend to impose austere measures. Finally, the Department points to the creation of six new codes in eastern Massachusetts as evidence that the situation in western Massachusetts is equally dire.⁷

RCN respectfully submits that the Department has failed to demonstrate the existence of “extenuating and unique” circumstances that would allow it to depart from FCC rules concerning the imposition of rationing prior to the adoption of an area code relief plan and a date for relief. The fact that the industry has not voluntarily agreed to the rationing of an essential resource does not set Massachusetts apart from other states. Rationing is disfavored by the industry as it may prevent carriers from receiving the codes that are needed to provide service. By limiting carriers access to numbering resources, rationing threatens to negatively impact competition as new carriers are unable to obtain the resources they need. Further, rationing is not a number conservation measure but rather a means to artificially slow the demand for numbering resources.⁸ Given the negative impact of rationing on competition, the FCC should not allow the Department to ration numbering resources.

It is unclear as to why the Department believes that a resolution passed by the state Senate and House directing the Department and the Governor to investigate all alternatives prior to establishing a new area code constitutes “extenuating and unique” circumstances. Perhaps the

⁶ The Department admits that it would follow the path urged by both houses of the state legislature even in the absence of the formal resolution. *See Petition*, at p. 17.

⁷ *See Petition*, at 15-17.

⁸ Rationing is not a method of number conservation as it does improve “the efficient use of” numbers. *See NXX Code Assignment Guidelines*, INC 95-0407-008 § 13 Glossary: Conservation.

Department hoped to draw an analogy to California. The FCC allowed the CPUC to depart from the FCC rules concerning rationing because of requirements imposed on the CPUC by statute. Specifically, public participation is required in the relief process at least 30 months prior to the submission of a recommended relief plan to the CPUC.⁹ A resolution directing the Department to engage in activity that the Department admits it would do anyway does not rise to the statutory mandate imposed on the CPUC. Furthermore, the Department has not demonstrated that it is subject to an equally burdensome statutory requirement.

B. *Rationing is not Required because of the New Numbering Rules*

Another reason advanced by the Department for rationing is that in combating number exhaust in eastern Massachusetts, several new area codes were introduced. What the Department fails to note is that circumstances have changed significantly. Most importantly, the FCC has adopted new rules governing the distribution of numbering resources.¹⁰ Under the new rules adopted by the Commission, carriers must verify their need in order to obtain both initial and growth numbering codes. Carriers receive initial codes if the carrier is able to provide service within sixty (60) days of activating the numbering resources. Growth codes are distributed to carriers that have no more than a six-month supply of numbering codes.¹¹ The Commission further determined that carriers should receive numbering resources on a “first-come, first-served basis.”¹² Thus, carriers receiving numbering resources are subject to a regime that requires an extensive demonstration of

⁹ See *California Delegation Order*, at ¶ 38 (stating “We are unaware of any other state commission being subject to a similarly time-consuming public participation requirement.”).

¹⁰ See *Numbering Order*, at ¶¶ 88-91.

¹¹ See 47 C.F.R. § 52.15 (2000).

¹² See *Numbering Order*, at ¶ 92.

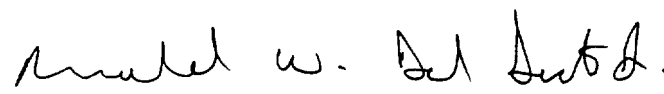
need. To further restrict the ability of carriers to obtain numbering resources through the use of rationing procedures threatens to severely restrict the ability of both new market entrants and other competitive providers to provide innovative services and to respond to the demands of the marketplace.

Aside from the negative impact on competition, it is inconsistent with the new rules to assign numbering resources through the use of a lottery. As set out above, numbering resources are distributed on a needs basis. Since rationing does not provide carriers that have demonstrated the requisite level of need with numbering resources but instead only with the chance to receive such resources, it is inconsistent with the Commission's rules to allow the Department to assign numbers in this manner.

IV. Conclusion

For the reasons detailed in its prior filings in regard to various state petitions seeking additional delegated numbering authority, RCN respectfully asks that the FCC implement number pooling at the national level. Since the FCC has already granted a number of requests by other state commissions, RCN requests that the Commission focus on certain implementation issues that have caused carriers problems in other states. Thus, the Commission should clearly limit the authority to *fully* implement a number pooling trial in a particular MSA before expanding to a separate MSA and the number pooling trial should conform to national standards. RCN requests that the FCC direct the Department to reserve one 10,000 NXX block for facilities-based providers. Further, the Commission should deny the Department's request to set and/or revise rationing procedures. The new rules adopted by the FCC no longer allow state commissions to engage in rationing. In the alternative, the Department failed to demonstrate that "extenuating and unique" circumstances exist in Massachusetts to justify a departure from the rules.

Respectfully submitted,



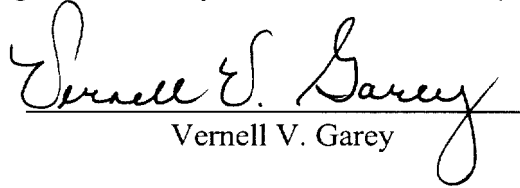
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Dated: September 26, 2000

CERTIFICATE OF SERVICE

I, **Vernell V. Garey**, hereby certify that on September 27, 2000 the foregoing document was served on the individuals listed on the following service list by first-class U.S. Mail (or by overnight delivery/hand-delivery, as marked*).


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